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5. Forgery (§ 48*)—Prosecution—Instructions.—In a prosecution for forging an option contract and attempting to use it to defraud, accused requested an instruction that before he could be convicted of uttering or attempting to employ as true the writing in controversy, the jury must find that it was a forgery, that he knew it was a forgery and that he was to share any recovery with the person named in the forged contract. The court struck out the third provision. Held, that the instruction as modified was erroneous, for it permitted a conviction without any proof that accused forged or assisted in using the forged instrument.

[Ed. Note.—For other cases, see Forgery, Cent. Dig. §§ 124-128; Dec. Dig. § 48.* 7 Va.-W. Va. Enc. Dig. 714.]

6. Criminal Law (§ 1158 (1)*)—Appeal—Questions for Review.—Where a conviction must be reversed for error in instructions, the appellate court will not review the weight of the evidence.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 3070, 3071, 3074; Dec. Dig. § 1158 (1).* 1 Va.-W. Va. Enc. Dig. 619.]

Error to Circuit Court, Russell County.

R. S. Hansel was convicted of forgery, and with uttering and attempting to employ a forged instrument with intent to defraud, and he brings error. Reversed and remanded.

C. S. McNulty, of Roanoke, and *Finney & Wilson*, of Lebanon, for plaintiff in error.

The Attorney General, for the Commonwealth.

HOTEL RICHMOND CORP. et al. v. COMMONWEALTH.

March 16, 1916.

[88 S. E. 173.]

1. Licenses (§ 8 (2)*)—"Hotel"—Refunding of Taxes.—Code 1904, pp. 2253, 2258, define a hotel as the place maintained by any person who for compensation furnishes lodging, diet, and entertainment for travelers, sojourners, guests, or boarders in his house, and shall also sell by retail wine, spirituous, or malt liquors, or any mixture of them, and the same section also imposed a graduated license tax on hotels. The Byrd Liquor Law 1908 (Laws 1908, c. 189) imposed a license tax for the sale of liquors, but repealed the earlier act, so that no tax was then imposed on hotels. The commissioner of revenue attempted to assess certain hotels with a license tax under Revenue Law 1902-04 (Laws 1902-04, c. 148, §§ 95, 96, 97; Code 1904, p. 2239), providing for the taxing of houses of private entertainment. After such attempted assessment, the Legislature passed a new act purporting to assess a license tax on hotels. Held, that the tax col-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

lected under Laws 1902-04, §§ 95, 96, 97, must be refunded, since their meaning could not be extended to apply to hotels; the Legislature evidently intending that it should not.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. § 17; Dec. Dig. § 8 (2).* 9 Va.-W. Va. Enc. Dig. 613.]

For other definitions, see Words and Phrases, First and Second Series, Hotel.]

2. Licenses (§ 34*)—Refunding of License Tax—Voluntary Payment.—Although ordinarily money paid for taxes voluntarily or under mistake of law cannot be refunded, that is not true of license taxes since Code 1904, § 568, provides that any person assessed with a license tax may within one year secure a refund; the general rule being expressly contradicted by such statute.

[Ed. Note.—For other cases, see Licenses, Cent. Dig. § 68; Dec. Dig. § 34.* 9 Va.-W. Va. Enc. Dig. 306.]

Error to Hustings Court of Richmond.

Proceedings by the Hotel Richmond Corporation and others against the Commonwealth. Heard on writ of error to review an order adverse to the petitioners. Reversed.

R. E. Byrd, of Richmond, for plaintiff in error.

John G. Pollard, Atty. Gen., for the Commonwealth.

ROBINSON *v.* CHRISTIAN.

March 20, 1916.

[88 S. E. 164.]

Courts (§ 42 (6)*)—Establishment—Validity of Statutes.—Acts 1914, c. 142, creating the office of civil and police justice in the cities of Newport News and Alexandria, and providing the jurisdiction thereof, is constitutional and valid.

[Ed. Note.—For other cases, see Courts, Cent. Dig. §§ 181-183; Dec. Dig. § 42 (6).* 3 Va.-W. Va. Enc. Dig. 700.]

Mandamus by E. S. Robinson against T. J. Christian. Order that the writ issue.

S. O. Bland, of Newport News, for plaintiff.

S. Gordon Cumming, of Hampton, for respondent.

SOUTHERN RY. CO. *v.* JONES' ADM'R.

March 16, 1916.

[88 S. E. 178.]

1. Railroads (§ 308)—Operation—Negligence—Crossing Accidents—Violation of Ordinance.—Where a city ordinance required gates to

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